BDP-SPS

Bharat D. Pandit

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 353 OF 2014

Subhash Murlidhar Avachat …. Applicant.

V/s

Karbhari Namdeo Gadkar & Anr. ….. Respondents.

Mr. Hushing Praveen Kashinath for the Applicant.

Mr. Rahul D. Motkani for Respondent No.1.

Mr. A.A. Palkar, APP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 6, 2019

P.C.:-

1] The Applicant/Complainant initiated Summary Criminal Case No. 101 of 2011 in the Court of the learned Judicial Magistrate, Daund, claiming that the cheque for an amount of Rs 3 lakhs issued by the Respondent/Accused towards legally enforceable debt was dishonoured.

2] The learned Magistrate, after appreciating the pleadings and the evidence, acquitted the Respondent/Accused vide judgment dated 30/7/2014. As such, this application for leave to appeal.

3] The submissions are, Respondent/Accused was advanced loan by Credit Co-operative Society, so as to execute work of harvesting and transportation of sugarcane along with the present Applicant/Complainant. Since the work was not executed by the Accused, towards payment of said amount of Rs 3 lakhs which was given as an advance, the cheque in question came to be issued.

4] So as to justify the case of the Complainant of involvement of the Accused in the offence in question, the learned Counsel for the Applicant would draw support from the documentary and oral evidence on record. According to him, presumption under Section 139 of the Negotiable Instruments Act is considered to the detriment of the Applicant and as such, there is an illegality.

5] The learned Counsel for the Respondent/Accused supported the judgment of acquittal.

6] The case of the Complainant before the learned Magistrate was that, there was an agreement with one Bhima Sarva Seva Sangh in the year 2010-2011 for harvesting and transportation of sugarcane. From the agreement entered into between the said Sangh and the Applicant, it is apparent that the Accused is shown to be a co-borrower. If Respondent-Accused was shown to be a co-borrower, it is difficult to infer as to how a co-borrower can be saddled with liability of legally enforceable debt to be paid by the principal borrower when fact remains that the agreement of loan reflects that the Applicant was the principal borrower.

7] The learned Magistrate was right in ordering acquittal of the Respondent/Accused particularly when the Applicant has failed to discharge his onus of proving the fact that the cheque was issued against legally enforceable liability.

8] Through oral and documentary evidence, Applicant has failed before the learned Magistrate to demonstrate that the Applicant has advanced loan and towards payment of the same, the cheque in question came to be issued.

9] No illegality therefore could be noticed in the order impugned. The view for acquittal of the Accused expressed by the learned Magistrate is a possible view. Hence, leave stands refused. Application is dismissed.

(NITIN W. SAMBRE, J.)